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EQUAL EMPLOYMENT OPPORTUNITY

3 COMMISSION

E-filed 9/26/06

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16 Attorneys for Defendants
17 HARMAN-CHIU, INC., d/b/a KFC/TACO BELL, HARMAN MANAGEMENT
CORPORATION, INC., AND JORGE GARCIA
18

19
20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22

23 **EQUAL EMPLOYMENT OPPORTUNITY**)
COMMISSION,)

Civil Action No. C-05-3615 JF

24)
25)
26)
27)
28)
Plaintiff,

CONSENT DECREE

SANDRA VARGAS, ESTHER
HERNANDEZ, and MARIVEL
HERNANDEZ

Plaintiff/Intervenors,

CONSENT DECREE
CIV. C 05 3615 JF

1 v.

2 **HARMAN-CHIU, INC., d/b/a/**
 3 **KFC/TACO BELL, HARMAN**
 4 **MANAGEMENT CORPORATION,**
INC., JORGE GARCIA, AND
DOES 1-10 inclusive,

5
 6 Defendants.

7
 8 Plaintiff U.S. Equal Employment Opportunity Commission ("Commission" or "EEOC")
 9 brought this lawsuit under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights
 10 Act of 1991, to correct alleged unlawful employment practices on the basis of sex harassment
 11 and retaliation and to make whole Ms. Sandra Vargas and other similarly situated female
 12 employees aggrieved by the alleged unlawful practices. Plaintiff EEOC alleged that defendants
 13 HARMAN-CHIU, INC., d/b/a KFC/TACO BELL (hereinafter "the Company") and HARMAN
 14 MANAGEMENT CORPORATION ("HMC"), unlawfully subjected Ms. Vargas and others to a
 15 sexually hostile work environment and retaliation. Plaintiff -Intervenors Sandra Vargas, Esther
 16 Hernandez and Marivel Hernandez intervened in the lawsuit alleging both federal and state
 17 claims of discrimination. Plaintiff EEOC and the Intervenors are collectively referred to as the
 18 "Plaintiffs." Defendants denied all the allegations.
 19
 20

21 In the interest of resolving this matter and as a result of having engaged in
 22 comprehensive settlement negotiations, the Commission, Intervenors, and Defendants
 23 (hereinafter referred to as "the Parties") have agreed that the above-captioned lawsuit (the
 24 "Lawsuit") should be finally resolved by entry of this Consent Decree. This Consent Decree
 25 shall not constitute an adjudication and/or a finding on the merits of the Lawsuit.
 26

27 This Consent Decree resolves all claims arising out of EEOC Charge No. 377-2003-
 28 00905 and the complaints filed in the Lawsuit, and constitutes a complete resolution of all claims

1 of sex discrimination, sexual harassment, and retaliation under Title VII that were made or could
 2 have been made by the Commission and Intervenors in this Lawsuit. This consent decree also
 3 resolves all claims for attorneys fees and costs that were made or could have been made by the
 4 Commission and Intervenors, and their respective attorneys, in this Lawsuit. This Consent
 5 Decree does not, however, resolve any future charges or charges that may be pending with the
 6 EEOC other than the charge and complaints specifically referenced in this paragraph.

8 With the exception of the settlement agreement between Intervenors and Defendants,
 9 this Consent Decree comprises the full and exclusive agreement of the Parties with respect to the
 10 matters discussed herein. No waiver, modification or amendment of any provision of this
 11 Consent Decree shall be effective unless made in writing and approved by all the Parties to this
 12 Decree, and any substantive change, modification or amendment of any provision of this
 13 Consent Decree shall also require approval by the Court.

15 The Court has reviewed this Consent Decree in light of the pleadings, the record herein,
 16 and now approves this Consent Decree. THEREFORE, IT IS ORDERED, ADJUDGED AND
 17 DECREED:

19 I. **GENERAL PROVISIONS**

- 20 1. This Court has jurisdiction over the subject matter and the Parties to this Lawsuit. This
 21 Court will retain jurisdiction over this Decree for all purposes until the expiration of
 22 Defendants' obligations as set forth herein.
- 23 2. Defendant HMC will be dismissed with prejudice from this lawsuit.
- 24 3. This Consent Decree is final and binding upon the Parties, their successors and assigns.

26 II. **GENERAL INJUNCTIVE RELIEF**

- 27 4. ***Sexual Harassment:*** Consistent with Section 703 of Title VII, 42 U.S.C. §2000e-2, the
 28

Company, and its officers, agents, managers (including supervisory employees), successors and assigns, shall be enjoined from: (a) discriminating against persons on the basis of sex in the terms and conditions of employment; (b) engaging in or be a party to any action, policy or practice that is intended to, or is known to them, to have the effect of harassing or intimidating any employee on the basis of sex; or (c) creating, facilitating or permitting, to the extent known to them, the existence of a work environment hostile to female employees.

5. ***Retaliation:*** The Company its officers, agents, managers (including supervisory employees), successors or assigns, are enjoined from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee of the Company because he or she has in the past, or during the term of this Consent Decree (a) opposed any practice of harassment or other discriminatory acts on the basis of sex made unlawful under Title VII; (b) filed a Charge of Discrimination alleging any such practice; (c) testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by the Company), proceeding or hearing in connection with this Lawsuit; (d) was identified as a possible witness in this Lawsuit; (e) asserted any rights under this Consent Decree; or (f) sought and/or received any monetary or non-monetary relief in accordance with this Consent Decree.

III. **MONETARY RELIEF**

6. The Company is to pay the total sum of \$349,800.00 (Three hundred and forty nine thousand and eight hundred Dollars and No Cents) (the "Settlement Payment") as damages, to be allocated to Sandra Vargas, Esther Hernandez, Marivel Hernandez, other

1 similarly situated women, and their respective attorneys as determined by the EEOC and
2 Plaintiff Intervenors as set forth in Paragraph 7.

3 7. Sandra Vargas, Esther Hernandez, Marivel Hernandez and other similarly situated
4 women.
5

6 a. \$345,000.00 of the Settlement Payment will be paid as damages for physical
7 injuries and/or physical illness, and emotional distress relating to such physical
8 injuries and/or physical illness and will be allocated to Sandra Vargas, Esther
9 Hernandez, Marivel Hernandez, other similarly situated women, and their
10 respective attorneys, as determined by the EEOC and Plaintiff Intervenors. The
11 remaining \$4,800.00 of the Settlement Payment will be allocated as follows:
12 \$1,600.00 to Sandra Vargas for vocational training, \$1,600.00 to Esther
13 Hernandez for vocational training, and \$1,600.00 to Marivel Hernandez for
14 vocational training
15

16 b. The Plaintiffs shall advise the Company of the allocation of the Settlement
17 Payment, and the Company shall report the Settlement Payment by issuance of
18 IRS Form 1099.
19

20 c. The Company shall pay the Settlement Payment as follows:
21

22 i. Within ten (10) days of all of the following having occurred: 1) the entry
23 of this Consent Decree, 2) dismissal of the Complaint in Intervention with
24 prejudice, 3) dismissal of HMC with prejudice, and 4) receipt of properly
25 completed W-9's, the Company will issue 1) a check for the amount of
26 \$319,800.00 made jointly payable to Sandra Vargas, Esther Hernandez, Marivel
27 Hernandez, and Talamantes/Villegas/Carrera, LLP, and 2) two separate checks for
28

the identified women made in their respective names and in the amounts (which collectively shall not exceed \$30,000.00) provided by the EEOC. The Company shall make payment in the form of a business check, cashier's check, or certified check.

The Company will mail the check for Sandra Vargas, Esther Hernandez, and Marivel Hernandez, and Talamantes/Villegas/Carrera, LLP to Virginia Villegas, Talamantes/Villegas/Carrera, LLP, 1550 Bryant Street, Suite 725, San Francisco, CA 94105. The Company will mail the checks for the identified women to Evangelina Fierro Hernandez, Senior Trial Attorney, EEOC 350 The Embarcadero, Suite 500, San Francisco, CA 94105.

ii. The EEOC will distribute the check to the identified former female employees within ten (10) days of receipt. The Company will forward the checks within ten (10) days of the EEOC forwarding the release to Defendants' counsel.

d. Entire Consideration. The Plaintiffs agree that the foregoing amounts shall constitute the entire monetary consideration provided to the Plaintiffs under this Consent Decree and the Settlement Agreement between Intervenor and Defendants, and that Plaintiffs, and their respective attorneys, will not seek any further compensation for any other claimed damage, cost, or attorney's fees in connection with the matters encompassed by this Consent Decree.

IV. SPECIFIC INJUNCTIVE RELIEF

8. Zero-Tolerance

The Company affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives":

1 The Company is firmly committed to maintaining a zero-tolerance
2 policy concerning discriminatory harassment and retaliation against
3 individuals who report harassment in the company's workplace; to
4 swiftly and firmly respond to any acts of harassment and retaliation
5 of which the company becomes aware; to imposing appropriate
6 discipline designed to strongly deter future acts of harassment or
7 retaliation; and to actively monitor its workplace in order to ensure
8 tolerance, respect and dignity for all employees.
9

10 This paragraph does not create any individual contractual or common law causes of
11 action or other rights that would not otherwise exist under statute.
12

13 **9. EEO and Harassment Policies**

14 The Company shall revise to the extent necessary EEO & harassment policies,
15 within thirty (30) days of signing the Consent Decree, such that the policies: (i)
16 include definitions of discriminatory harassment, with specific reference to
17 harassment based on sex; (ii) include examples to supplement the definitions of
18 harassment based on sex; (iii) provide for appropriate discipline and/or corrective
19 action for incidents of discriminatory harassment designed to deter future acts of
20 harassment; (iv) include strong non-retaliation language with examples to
21 supplement the definition of retaliation; (v) provide for appropriate discipline for
22 incidents of retaliation designed to deter future acts of retaliation; (vi) provide that
23 complaints of harassment and/or retaliation will be accepted irrespective of
24 whether they are made verbally or in writing; (vii) provide a reasonable timetable
25 for commencing an investigation after a complaint is made or received and for
26
27
28

1 appropriate remedial action, if warranted, to be taken upon conclusion of an
2 investigation; and (viii) indicate that, promptly upon the conclusion of the
3 investigation of a complaint, the Company will communicate to the complaining
4 party the results of the investigation and the remedial actions taken or proposed, if
5 any.

6
7 b. The Company shall effectively disseminate its revised policies and
8 procedures in English and Spanish by:

9
10 i. Distributing copies of the policy to all current employees within 30
11 days of its adoption;

12 ii. Giving a copy of the policy to and reviewing the policy with all
13 new employees upon the employees' hire.

14 c. The Company will submit a copy of the revised EEO and harassment
15 policies to EEOC at the same time it submits the report on the completion
16 of training as described below.

17
18 10. **Complaint Procedure.**

19 The Company shall develop a complaint procedure designed to encourage employees to
20 come forward with complaints about violations of its harassment policy. As part of the
21 policy, the Company shall provide its employees with convenient, confidential and
22 reliable mechanisms for reporting incidents of harassment and retaliation. The
23 Company's complaint procedure and harassment policy shall notify employees that they
24 can lodge a complaint with their immediate supervisor, restaurant consultant, or a
25 Company Corporate Officer, and shall provide the name and telephone numbers for such
26 individuals. Contact information for the restaurant consultant and Company Corporate
27
28

1 Officer shall also be continuously posted in a prominent place at the Company's business
2 location in Sunnyvale, California.

- 3 a. The Company will submit a copy of the complaint procedures to the EEOC
4 twenty (20) days before the completion of training as required below.
5

6 11. **Posting.**

7 The Notice is attached hereto as Exhibit A, outlines the terms of the non-monetary aspects
8 of the Consent Decree. It shall remain posted in English and Spanish, in a clearly visible
9 location frequented by employees at the Company's restaurant in Sunnyvale, California
10 during the term of this Consent Decree. The Company shall take all reasonable steps to
11 ensure that the posting is not altered, defaced or covered by any other material. If the
12 notice becomes defaced or illegible, the Company shall replace it. The Company shall
13 certify to the EEOC in writing within ten (10) business days after entry of the Decree that
14 the Notice has been properly posted.
15

16
17 12. **Distribution of Anti-Harassment Policy.**

18 Within thirty (30) days of the entry of this Consent Decree, the Company shall issue to all
19 employees, supervisors and managers at its restaurant its anti-harassment policy and
20 procedure statement, in English and Spanish, and each such person shall be asked to sign
21 an acknowledgment that they have received and read the policy. The same
22 acknowledgment shall be required of all newly hired employees at the start of their
23 employment.
24

25 13. **Training of Employees.**

26 The Company shall provide and require all current and new employees to attend anti-
27 harassment training once every year throughout the duration of this Consent Decree. The
28

purpose of said training shall be to give participants an understanding of harassment issues, particularly sexual harassment, including but not limited to what constitutes sexual harassment, sources of legal protection for sexual harassment victims, the employees' obligation to report sexual harassment, the employer's obligation to take preventive, investigative and remedial action with respect to harassment complaints, and to review company policies (including discipline policies) and practices related to sexual harassment and retaliation with Company employees. The training will be given in both English and Spanish.

14. **Training Logistics.**

The content, method of training and size of training classes is subject to approval by the Commission which approval shall not be unreasonably withheld and which shall take into consideration the Company's operational needs. The Company agrees to provide a description of each training program to counsel for the Commission no later than twenty (20) days before the training programs are scheduled to be held.

15. **Acknowledgment of Training Attendance.**

All persons attending mandatory anti-harassment training pursuant to this Consent Decree shall sign an acknowledgment of their attendance at the training, the date thereof, and their position with the company. The Company shall retain the originals of these acknowledgments and provide the EEOC with a copy thereof each year.

16. **Expungement of Records and Disclosure of Information Regarding Sandra Vargas, Esther Hernandez, Marivel Hernandez and Claimants' Employment**

- a. The Company shall not disclose any information or make references to any charges of discrimination or this lawsuit in responding to employment reference

requests for information about Sandra Vargas, Esther Hernandez, Marivel Hernandez, and the identified similarly situated women.

- b. The Company shall expunge from Sandra Vargas', Esther Hernandez', Marivel Hernandez', and the identified similarly situated women's personnel file any references to a charge of discrimination against the Company and this lawsuit.
- c. The Company shall modify Sandra Vargas', Esther Hernandez', Marivel Hernandez', and the identified similarly situated women's personnel file such that the reason for their separation from employment is officially reported as a resignation.
- d. The Company shall expunge from Sandra Vargas' personnel file all disciplinary notices.
- e. From the date of entry of this Consent Decree, the Company shall not disclose in response to inquiries from potential employers, any information regarding Sandra Vargas, Esther Hernandez, Marivel Hernandez, and the identified similarly situated women's employment with the Company except as follows:
 - i. In response to a specific inquiry, the Company may disclose Sandra Vargas', Esther Hernandez', Marivel Hernandez', and identified former female employees' dates of employment, position held and final rate of pay;
 - ii. The Company may report any information as required by law to state or federal authorities;
 - iii. The Company may disclose information under Court order;
 - iv. Within ten (10) days from the date of entry of this Consent Decree, the

1 Company shall provide Sandra Vargas, Esther Hernandez, Marivel
2 Hernandez, and similarly situated women with a letter of reference which
3 would state her dates of employment and positions held. The original letter
4 of references shall be sent to Evangelina Fierro Hernandez, Senior Trial
5 Attorney, EEOC, 350 The Embarcadero, Suite 500, San Francisco, CA
6 94105.
7

- 8 v. Jorge Garcia shall issue a letter of apology to Sandra Vargas, Esther
9 Hernandez and Marivel Hernandez.
10

11 **17. Reports to the Commission**

12 a. Training Report:

13 Within thirty (30) days of completion of the training required by this Consent
14 Decree, the Company will send the EEOC verification of its completion of
15 harassment training for its employees.
16

- 17 b. Sexual Harassment Complaint Reports: Within ninety (90) days after entry of this
18 Decree, the Company will mail to counsel for the Commission a report containing
19 the following information and documentation:

- 20 i. Copies of all sexual harassment complaints, other than the complaints that
21 are the subject of this Lawsuit, and a statement regarding the result of the
22 investigation of each complaint. Additionally, the Company will identify
23 the name, address and telephone number of the complainant and identify
24 the person who received the complaint. A copy of all records, documents
25 and other writings relevant to such complaints and investigations shall be
26 maintained by the Company during the period of the Consent Decree and
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will be made available to the Commission within ten (10) business days following a written request from the Commission.

- ii. On the fifth day of January and June of each year during the duration of this Consent Decree, the Company will mail to counsel for the Commission a report containing the above documentation and information.

18. **Policies Designed to Promote Supervisor Accountability**

a. **Communication of Potential Discipline for Engaging in Harassment.**

The Company shall impose appropriate discipline, up to and including termination, suspension without pay or demotion, upon any supervisor or manager who engages in sexual harassment or knowingly permits any such conduct to occur in his or her work area or among employees under his or her supervision, or who retaliates against any person who complains or participates in any investigation or proceeding concerning such conduct. The Company shall communicate this policy to all of its supervisors and managers.

b. **Communication of Duty to Actively Monitor Worksite.**

The Company shall advise all managers and supervisors of their duty to actively monitor their work areas to ensure employee compliance with the company's anti-harassment policy, and to report any incidents and/or complaints of harassment and/or retaliation of which they become aware to the individuals charged with handling such complaints.

V. **RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE**

- a. This Consent Decree shall terminate three (3) years from the date of entry by the Court, unless the Commission petitions this Court for an extension of the Decree

1 because of noncompliance by the Company. If the Commission determines that
2 the Company has not complied with the Consent Decree, the Commission will
3 provide written notification of the alleged breach to the Company and will not
4 petition the Court for enforcement sooner than thirty (30) days after providing
5 written notification. The thirty-day period following written notice shall be used
6 by the parties for good faith efforts to resolve the issue. If the Commission
7 petitions the Court and the Court finds the Company to be in substantial violation
8 of the terms of the Decree, the Court may extend this Consent Decree
9

- 10
11 b. Except as provided in the preceding paragraph, three (3) years after the entry of
12 this Consent Decree, this lawsuit will be dismissed with prejudice, provided that
13 the Company has complied substantially with the terms of this Consent Decree.
14 The Company will be deemed to have complied substantially if the Court has not
15 made any findings or orders during the term of the Decree that the Company has
16 failed to comply with any of the terms of this Decree. This Consent Decree will
17 automatically expire without further Court Order.
18

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1 On Behalf of Plaintiff Commission

On Behalf of Defendants:

2
3 Dated: September ____, 2006

Dated: September ____, 2006

4
5
6 William R. Tamayo
Regional Attorney

Bruce J. Boehm
McKAY, BURTON & THURMAN
Attorney for Harman-Chiu and Harman
Management

7
8
9 Jonathan T. Peck
10 Supervisory Trial Attorney

On Behalf of Plaintiff-Intervenors

11
12
13 Evangelina Fierro Hernandez
14 Senior Trial Attorney
15 U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Virginia Villegas
TALAMANTES/VILLEGAS/
CARRERA, LLP
Attorney for Intervenors

16
17 IT IS SO ORDERED:

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19
20 Dated: 9/22/06

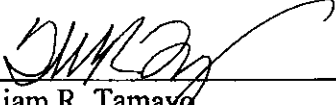

Jeremy Fogel
United States District Court Judge

1 On Behalf of Plaintiff Commission

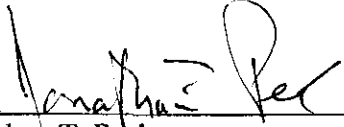
On Behalf of Defendants:

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3 Dated: September 18th, 2006

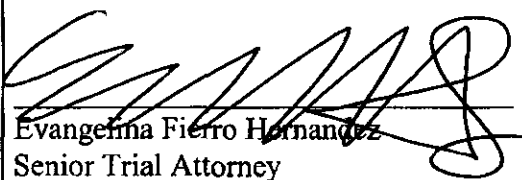
Dated: September _____, 2006

4
5 
6 William R. Tamayo
Regional Attorney

Bruce J. Boehm
McKAY, BURTON & THURMAN
Attorney for Harman-Chiu and Harman
Management

7
8 
9 Jonathan T. Peck
10 Supervisory Trial Attorney

On Behalf of Plaintiff-Intervenors

11
12 
13 Evangelina Fierro Hernandez
14 Senior Trial Attorney
15 U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Virginia Villegas
TALAMANTES/VILLEGAS/
CARRERA, LLP
Attorney for Intervenors

16
17 IT IS SO ORDERED:

18
19
20 Dated: _____

Jeremy Fogel
United States District Court Judge

1 On Behalf of Plaintiff Commission

On Behalf of Defendants:

3 Dated: September ____, 2006

Dated: September 15, 2006

6 William R. Tamayo
Regional Attorney

Bruce J. Boehm
Bruce J. Boehm
MCKAY, BURTON & THURMAN
Attorney for Harman-Chiu and Harman
Management

10 Jonathan T. Peck
Supervisory Trial Attorney

On Behalf of Plaintiff-Intervenors

13 Evangelina Fierro Hernandez
Senior Trial Attorney
14 U.S. EQUAL EMPLOYMENT
15 OPPORTUNITY COMMISSION

Virginia Villegas
TALAMANTES/VILLEGAS/
CARRERA, LLP
Attorney for Intervenors

17 IT IS SO ORDERED:

20 Dated: _____

Jeremy Fogel
United States District Court Judge